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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/752,375	12/29/2000	Futoshi Tanigawa	10059-365US (P23917-01)	1498 II
570	7590	10/01/2003		
AKIN GUMP STRAUSS HAUER & FELD L.L.P. ONE COMMERCE SQUARE 2005 MARKET STREET, SUITE 2200 PHILADELPHIA, PA 19103-7013			EXAMINER CANTELMO, GREGG	
			ART UNIT	PAPER NUMBER

1745
DATE MAILED: 10/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)
	09/752,375	TANIGAWA ET AL.
	Examiner	Art Unit
	Gregg Cantelmo	1745

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) The period for reply expires 3 months from the mailing date of the final rejection.
- b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. The proposed amendment(s) will not be entered because:
 - (a) they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) they raise the issue of new matter (see Note below);
 - (c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: ____.

3. Applicant's reply has overcome the following rejection(s): _____.
4. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: 16-25.

Claim(s) rejected: 1,4,7,10 and 13.

Claim(s) withdrawn from consideration: _____.

8. The proposed drawing correction filed on _____ is a) approved or b) disapproved by the Examiner.

9. Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: It fails to provide convincing evidence that the prior art rejection of record does not render the claimed invention obvious.

In particular, Applicant argues that the secondary reference JP '508 is drawn to negative electrode materials and not positive electrode materials as recited in the instant claim and further in JP '701.

The prior art of JP '508 provides a teaching that by selecting the nickel hydroxide valence in an electrode of a rechargeable battery, the charging and discharging characteristics of the battery can be improved. One of ordinary skill in the art would have found such a teaching to be equally applicable to either positive or negative electrodes in rechargeable batteries which employ nickel as an active material for the purpose of optimizing the charge and discharge characteristics of the electrode having nickel as an active material.

Furthermore, given the ranges of nickel hydroxide (90-60 wt. percent) to nickel oxyhydroxide (10-40 wt. percent), the nickel in the hydroxide has a charge of +2 and the nickel in the oxyhydroxide has a charge of +3. Given the ranges set forth therein (about 60% from the hydroxide and about 40% from the oxyhydroxide) the average oxidation number of the nickel in the electrode will be above 2.5 and close to about, if not slightly above 2.6 which is within the critical range disclosed in the instant application

Myr. Carter
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